

September 21, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

**RE: Investigation by the Department of Telecommunications and Energy on Its Own
Motion into Distributed Generation, D.T.E. 02-38-C**

Dear Ms. Cottrell:

On June 30, 2006, the Massachusetts Distributed Generation Collaborative (“DG Collaborative”) submitted its final report (“2006 Report”) to the Department of Telecommunications and Energy (“Department”). In the 2006 Report, the DG Collaborative proposes revisions to the Model Interconnection Tariff (“Tariff”) and makes recommendations related to Distributed Generation (“DG”). The Department issued a Notice of Filing and Request for Comments inviting all interested persons to file written Initial Comments on the 2006 Report on September 7, 2006¹ and Reply Comments on September 22, 2006. Pursuant to the procedural schedule, the Attorney General submits this letter as his Reply Comments.²

¹ The Attorney General, the Massachusetts Division of Energy Resources, the Energy Consortium and the Low-Income Weatherization and Fuel Assistance Program Network filed initial comments.

² These Reply Comments do not respond to all of the arguments made by the parties. Rather, they respond only to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence in regard to any particular argument in another party’s comments should not be interpreted as assent.

I. INTRODUCTION

The Attorney General supports the ongoing work of the DG Collaborative, as well as the results compiled in the 2006 DG Report, including the proposed changes to the Model Interconnection Tariff. The Attorney General requests that the Department approve the revisions to the Model Interconnection Tariff as proposed.

In DOER's Initial Comments, however, it requests that the Department open an investigation into the proper design of standby rates to serve DG. According to DOER, standby rates are "economic barriers to the successful development of Distributed Generation," DOER Initial Comments at 2, and so it requests that the Department impose a system of reduced or "free" standby rates that are not cost-based and which are subsidized by other customers.

The Department should reject DOER's request on the grounds that DOER has failed to provide any credible evidence to support the need for such an investigation and that "free" standby service is unjust, unreasonable and discriminatory.

II. ARGUMENT

A. THE 2006 DG COLLABORATIVE REPORT

DOER claims that "the 2006 Report provides *significant evidence* of the need to fully address [standby] rates" because the report identified a number of benefits that DOER claims now need to be quantified by the Department in an investigation. DOER Initial Comments at 5 (*emphasis added*). The 2006 Report, to the contrary, merely describes a number of technical analyses and other steps that require further analysis. 2006 DG Report at 35-36. The 2006 Report's conclusion, based on the economic analysis prepared for the DG Collaborative by Navigant Consulting, LLC ("Navigant Analysis"), is that "DG appears to provide some positive benefits in deferral of distribution investment, but only within narrow windows of opportunity, based on specific time frames, need dates and specific feeder lines, and only when DG is combined in a package of resources that includes energy efficiency and demand response measures." 2006 DG Report at 36. The 2006 Report further states that "the Collaborative believes that it would be inappropriate to draw broad conclusions about the potential of DG based solely on the limited perspective of distribution deferral as one potential source of value" and that further analysis of the costs and benefits is necessary before making such determinations. 2006 DG Report at 35-37. The 2006 Report clearly does "not support the widespread deployment of DG," nor does it support discounted or free standby rates for DG. 2006 DG Report at 35-37.

The 2006 Report recommended collection of more information on DG's ability to contribute to distribution planning through Massachusetts Technology Collaborative ("MTC") Congestion Relief Pilots. The Distribution Planning Working Group intends to conduct workshops to address: (1) Navigant's Analysis (2) the technical feasibility of DG to serve as an alternative to the traditional utility planning; and (3) the broader question of DG in distribution planning. 2006 DG Report at 40-41. DOER's approach would shortcut these recommendations and analysis.

B. DOER HAS NOT ESTABLISHED THAT STANDBY RATES ARE A BARRIER TO DG DEVELOPMENT

DOER claims that standby rates are a barrier to "full" DG development. DOER Initial Comments at 6-7. DOER maintains that a recent reduction in the number of applications for interconnection provides "clear evidence" that standby rates pose a barrier to large DG installations. *Id.* at 6. In support of its claim, DOER provided tables purporting to show the impact of NSTAR's standby rates before and after the implementation of those standby rates, and in comparison to DG development on National Grid's system. DOER Initial Comments, Tables 1 and 2 at 9; *see* Attachment A: *The Division of Energy Resources Tables 1 & 2*.

The Department should not rely on DOER's analysis. First, DOER appears to have used incorrect data to compare the number of interconnection requests for units above 250 kW in NSTAR's and National Grid's service territories after NSTAR instituted its standby rates. In its comments, DOER stated that developers added seven units above 250kW in National Grid's service territory and none of those units in NSTAR's. DOER Initial Comments at 6. A close inspection of Table 2, however, reveals that National Grid added only two of those units, not seven. *Id.* at 9. Second, DOER claims a decrease in the number of proposed gas-fired projects above 250 kW in NSTAR's service territory that occurred after the Department approved standby rates for NSTAR shows that the rates inhibited development of large DG projects. The evidence, however, actually indicates that the number of proposed projects decreased regardless of NSTAR's standby rates.

In NSTAR's territory, all projects, not just those subject to standby rates, declined during the period after NSTAR instituted standby rates. DOER Initial Comments Table 1; *see* Attachment A. The number of installations that are less than 250 kW declined by 65% in that time period. *Id.* The number of installations that are equal to 250 kW declined by 100% in that same time period. *Id.* Since the total number projects receiving funding from the MTC also declined in that period, as did the number of projects installed in the National Grid territory, other factors than standby rates are a more likely cause of the reduction in DG projects. *See* Attachment B: *No. of Renewable DG Projects Funded by MTC Per Year*. DOER also failed to completely analyze the number of proposed projects for other utilities, including Fitchburg Gas & Electric Company and Western Massachusetts Electric Company.

Most importantly, DOER did not take into consideration wholesale market instability, siting considerations, and general economic conditions (*e.g.*, rising interest rates) in its analysis. Although, DOER's analysis looks at natural gas fired plants, DOER fails to take into consideration the volatility of natural gas prices as a barrier to gas fired DG generation.

Finally, the Navigant Analysis concluded that "potential annual energy savings" drives customers to install DG and that "incentives," (standby rate discounts) have a limited impact on installation decisions. 2006 DG Report, Attachment G: DG and Distribution Planning: An Economic Analysis for the DG Collaborative at 18, 24. The Department, therefore, should not rely on DOER's claim that standby rates have caused the decline in new gas-fired DG project.

C. DOER HAS NOT ESTABLISHED THAT NSTAR'S RATES ARE UNJUST, UNREASONABLE OR DISCRIMINATORY

In *NSTAR Electric*, D.T.E. 03-121 (2004), the Department, with the benefit of a comprehensive record, including eight days of evidentiary hearings, approved a DOER sponsored settlement that established a set of cost-based standby rates for on-site generating facilities in NSTAR's service territory.³ The Settlement Agreement actually creates discounts and exemptions that should encourage the development of renewable DG.⁴ DOER now implies that the rates it agreed to are unjust, unreasonable or discriminatory.⁵

The party challenging a Department order has the burden to prove that the Department's rate decision was "unduly or irrationally discriminatory." *Massachusetts Oilheat Council v. Department of Pub. Utils.*, 418 Mass. 798, 804 (1994) *citing American Hoechst Corp. v. Department of Pub. Utils.*, 379 Mass. 408, 411, (1980) (citation omitted). DOER bears the burden of proving each and every element of its case by a preponderance of "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, §1(6); *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 7, n.5 (2001).

DOER has not provided evidentiary support that NSTAR's standby rates are unjust or unreasonable. It has not demonstrated that the existing rates impose an unjust and unreasonable rate design causing standby customers to pay more than their fair share of NSTAR's costs. "Fairness means that no class of consumers should pay more than the costs of serving that class." *Boston Gas Company*, D.T.E. 03-40, at 365 (2004); *see also KeySpan Energy Delivery New England*, D.T.E. 04-62 (2004). DOER has provided no evidence that any distribution company's standby rates should be eliminated or reduced.

³ The Attorney General was not a signatory to the settlement, but recommended its adoption subject to modification.

⁴ Customers with "Renewable Energy Technologies," as defined in G.L. c. 40J, § 4E(f)(1), are not subject to NSTAR's standby tariffs.

⁵ The Settlement prevents the Company from filing a request with the Department to change the Availability terms of the standby tariffs for effect before August 1, 2008.

D. DOER'S PROPOSED DG STANDBY RATE DESIGN IS UNJUST, UNREASONABLE OR DISCRIMINATORY

DOER proposes that customers should subsidize DG development because “the impact would not be significant and more than offset by the benefits of the added generation on the system.”⁶ DOER Initial Comments at 7. DOER maintains that “the bill impacts are relatively minor for each customer class. *Id.*

Free or subsidized standby service is unjust, unreasonable or discriminatory. As the Department noted in NSTAR's standby rate case:

Where a customer uses an on-site generator to serve all or a portion of its total electrical load, but may still call on the local distribution company to serve some or all of its power needs on short or no notice, the local distribution company must reserve sufficient distribution capacity to meet that contingent service requirement. There is a cost in providing that insurance of service.

NSTAR, D.T.E. 03-121 at 36. “The Department's ratemaking policy requires cost responsibility to follow cost incurrence.” *See Boston Gas Company*, D.P.U. 96-50 (Phase I) at 133-134 (1996). “To comply with the Department's ratemaking policy, standby rates must be designed so that the costs of providing standby service are recovered from standby customers and not shifted to other customers.” NSTAR, D.T.E. 03-121 at 47. *See Massachusetts Electric Company*, D.P.U. 95-40, at 142-143 (1995) (holding that a utility may not charge customers for discounts given to other customers for generation service); *Fitchburg Gas and Electric Light Company*, EC 95-19 (1995) (holding that the utility may discount rates for economic development, but that shareholders must pay the discount). DOER's subsidy of DG is inconsistent with established Department precedent. *C.f.* G.L. c. 25, § 19 (imposing certain statutory limitations on spending for energy efficiency programs).

⁶ The 2006 DG Report does not quantify any benefits from DG. Instead, the Report recommends further analysis of the costs and benefits. *See* Argument A.

III. CONCLUSION

The Department should approve the Model Interconnection Tariffs as recommended by the DG Collaborative. With respect to standby rates, there is no reason for the Department to revisit its decision in D.T.E. 03-121. NSTAR's standby rates are cost-based rates that fairly recover the cost of distribution facility investments made to serve DG customers. No further investigation by the Department on standby rate design issues is warranted or appropriate at the present time.

Respectfully submitted,

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Dated: September 21, 2006

cc: Mary Cottrell, Secretary
Jesse Reyes, Hearing Officer
Electronic Service List

Attachment A:
The Division of Energy Resources
Tables 1 & 2

Source: Division of Energy Resources Initial Comments at 9.

TABLE 1: Natural Gas Installations and the NSTAR Standby Rate

NSTAR Installations Before the Effective Standby Rate (4/01/04 to 12/31/04)

	Projects	Total kW	Average Size
<250	20	1975	99
= 250	6	1500	250
>250	7	7670	1096
All NG Projects	33	11145	338

NSTAR Installations After the Effective Standby Rate (1/1/05 to 3/31/06)

	Projects	Total kW	Average Size
<250	7	379	54
= 250	0	0	0
>250	0	0	0
All NG Projects	7	379	54

TABLE 2: Number of Natural Gas Installations in National Grid (Since 12/31/04)

	Projects	Total kW	Average Size
<250	8	356	45
= 250	0	0	0
>250	2	4000	2000
All NG Projects	10	4356	436

Attachment B: Number of Renewable DG Projects Funded by MTC Per Year

Source: MTC's RET Project Database *available at*
http://www.masstech.org/Project_Srch.asp

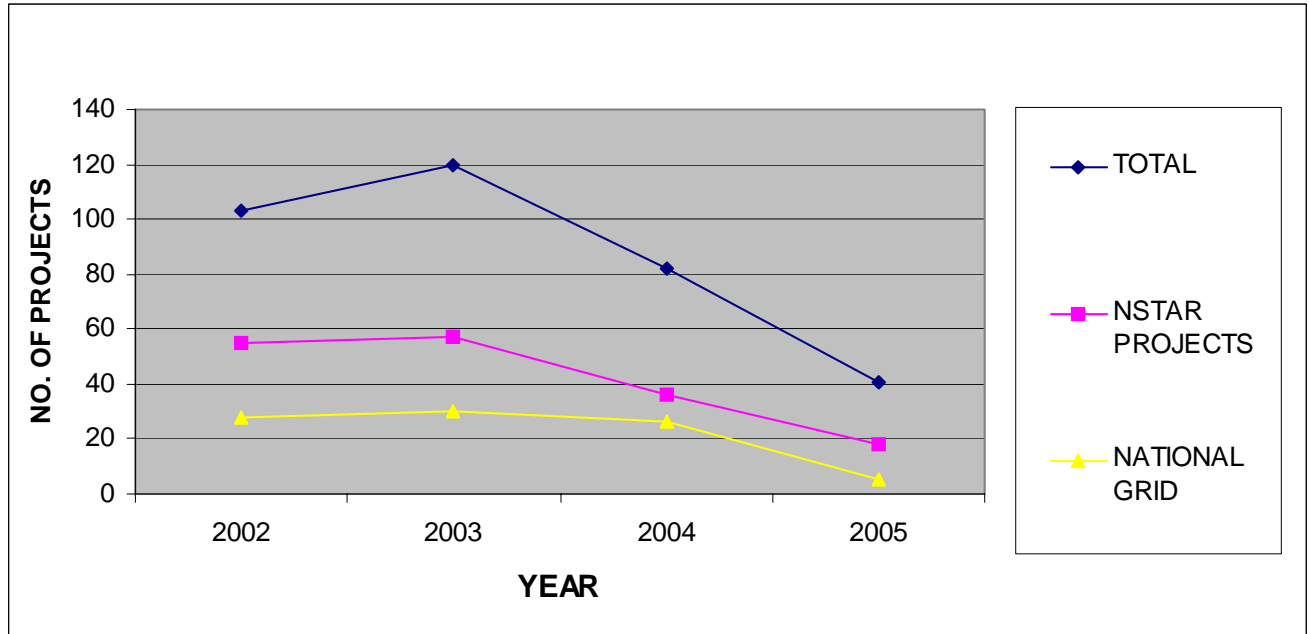


CHART SOURCE DATA

Year	Total Projects in RET Database	NSTAR MTC Projects	National Grid MTC Projects
2002	103	55	28
2003	120	57	30
2004	82	36	26
2005	41	18	5